



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 13, 1996

Ms. Linda J. Williamson  
Work Force Development Division  
Texas Workforce Commission  
101 E. 15th Street  
Austin, Texas 78778-0001

OR96-0691

Dear Ms. Williamson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39212.

The Texas Workforce Commission (the "commission") received a request for information in certain TDOC WFDD individual staff members' files, including e-mail. You claim that some of the requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. You have provided samples of the information for which you are claiming an exception. We have considered the exceptions you claimed and have reviewed the sample documents.

The commission claims that "it is overly burdensome to require that the agency review all of its records whether they fit into one of the requested categories or not in order to determine if the documents are exempt from disclosure." This is, in fact, the commission's burden if it wishes to withhold requested information from disclosure. *See* Gov't Code § 552.301(b)(3). We note that the two exceptions to disclosure that the commission has claimed are discretionary exceptions and may be waived by the commission should the commission wish to do so. *See* Gov't Code § 552.007. Section 552.007 provides as follows:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part or all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) *Public information* made available under Subsection (a) must be made available to any person. [Emphasis added.]

The commission may, therefore, choose to release to the public some or all of the requested information.

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. We conclude that the marked information in Exhibit "B" pertains to a personnel matter, *i.e.*, an EEOC complaint. Therefore, section 552.111 does not except it from required public disclosure.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. We agree that the highlighted information in Exhibit "C" is information that falls within the attorney-client privilege and may be withheld from disclosure under section 552.107(1).

The requestor asks that he be allowed to personally select from TDOC WFDD individual staff member's files, under supervision, certain categories of information. We note that section 552.221 of the Government Code provides:

(a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer.

(b) An officer for public information complies with Subsection (a) by:

(1) providing the public information for inspection or duplication in the offices of the governmental body; or

(2) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided by mail and agrees to pay the postage.

Generally, a requestor may choose to inspect or to copy public records or to both inspect and copy public records. In situations in which inspection would reveal confidential information, the requestor does not have the choice to inspect the records; rather, the governmental body must provide copies of the requested information with the confidential portions deleted. Open Records Decision No. 512 (1988); *see generally* Attorney General Opinion JM-672 (1987); Open Records Decision No. 606 (1992). Here, the commission is asserting a discretionary exception to disclosure. As we have concluded that the commission may withhold certain information under that discretionary exception, the requestor does not have the option to inspect those records but must accept copies with the information that we have concluded may be withheld from disclosure deleted. However, because the exception that the commission has asserted is discretionary, we note that, should the commission choose to waive that exception, the requestor would then be entitled to inspect the documents. *Cf.* Attorney General Opinion JM-757 (1987) (governmental body may refuse to allow public to duplicate records with portable equipment when it is unreasonably disruptive of working conditions, when records contain confidential information, or when safety or efficiency factors are at issue).<sup>1</sup>

In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

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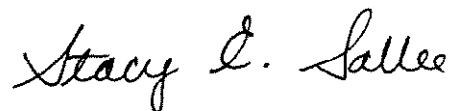
<sup>1</sup>The requestor has complained of the costs charged by the commission for copies in the past. We note that section 552.271 of the Government Code provides:

A charge may not be imposed for making available for inspection any public information that exists in a paper record, except that if a requested page contains confidential information that must be edited from the record before the information can be made available, the governmental body may charge for the cost of making a copy of the page from which information must be edited. No charge other than the cost of the copy may be imposed.

We note that the General Services Commission sets the costs that state agencies may charge for copies. We direct you and the requestor to the General Services Commission to resolve any questions on this subject.

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Stacy E. Sallee". The signature is written in a cursive, flowing style.

Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 39212

Enclosures: Marked documents

cc: Mr. Don Shepard  
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(w/o enclosures)